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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ANTOINETTE ABOUTANOS,

Plaintiff and Appellant,

v.

RONALD V. FRANCO, et al.,

Defendants and Respondents.

B205596

(Los Angeles County  
Super. Ct. No. YC051491)

APPEAL from an order of the Superior Court for Los Angeles County, Bob T. Hight, Judge. Reversed and remanded with directions.

Antoinette Aboutanos, in propria persona, for Plaintiff and Appellant.

Daniels, Fine, Israel, Schonbuch & Lebovits, Scott M. Leavitt, and Jennifer K. Tobkin for Defendants and Respondents.

Plaintiff Antoinette Aboutanos appeals from an order dismissing her premises liability lawsuit after the trial court granted defendants Ronald and Linda Franco's motion to enforce a settlement agreement. Although we conclude there was substantial evidence to support the trial court's order granting the motion, we hold that the trial court erred by dismissing the case rather than entering judgment "pursuant to the terms of the settlement," as required by Code of Civil Procedure<sup>1</sup> section 664.6. Therefore, we reverse the order of dismissal and remand the matter to the trial court to enter judgment in accordance with section 664.6.

## **BACKGROUND**

Aboutanos filed a personal injury complaint against her landlords, Ronald V. Franco and Linda M. Franco (the Francos) and Dublin Alondra Apartments<sup>2</sup> in August 2005, alleging that certain dangerous conditions in her apartment (a gas leak and mold) caused her injury. The case was set for trial in June 2006, but the trial date was continued several times, and trial finally was scheduled to begin on August 6, 2007.<sup>3</sup> On that date, the trial court ruled on motions in limine, then continued the matter to the next day. On August 7, the court ordered the parties to participate in a settlement conference with Judge Michael P. Vicencia.

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<sup>1</sup> Further undesignated statutory references are to the Code of Civil Procedure.

<sup>2</sup> Dublin Alondra Apartments was dismissed from the case in October 2005 due to plaintiff's failure to serve the complaint on it.

<sup>3</sup> One of the continuances was to allow time for plaintiff's attorney to file a motion to be relieved as counsel. After that motion was granted, plaintiff moved for an additional continuance so she could obtain new counsel. She did not, however, retain new counsel, and represented herself for the remainder of the proceedings.

The parties met with Judge Vicencia and, on August 8, 2007, reached a settlement. The terms of the settlement were stated on the record by Judge Vicencia: “[T]he defendants, through their insurance carrier, will pay the plaintiff the sum of \$20,000. [¶] In exchange for that, the plaintiff will dismiss the case, with prejudice, and release the defendants from any and all liability they have or may have. [¶] In addition, the plaintiff will acknowledge the existence of the liens in this case . . . and will agree to indemnify, hold harmless, and defend the defendants against anybody that tries to claim they owe money for any liens that you might have or any medical bills you have regarding this.” Judge Vicencia asked Aboutanos if she understood and agreed to those terms. Aboutanos stated that she did. Counsel for the Francos then noted that the agreement to indemnify, hold harmless, and defend extended to the Francos, as well as their insurance carrier and their lawyers. After explaining to Aboutanos what this additional term meant, Judge Vicencia again asked Aboutanos if she understood and agreed to it, and Aboutanos said that she did. Following some discussion regarding how the payment was going to be made, Judge Vicencia set an order to show cause regarding dismissal in 45 days before the original judge (Judge Hight), and told Aboutanos that it was her responsibility to cooperate with counsel in getting the necessary documents signed.

Two weeks later, before any action was taken to effectuate the settlement,<sup>4</sup> Aboutanos filed a motion to vacate the settlement. In the motion, Aboutanos argued that the settlement should be vacated because it was “made in bad faith” due to the conduct of the Francos’ attorney. She contended that the attorney: (1)

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<sup>4</sup> Apparently, counsel for the Francos had not yet sent a proposed release to Aboutanos by the time she filed her motion. Counsel sent the proposed release and a request for dismissal for Aboutanos to sign a week later, before filing the Francos’ opposition to the motion.

did not comply with a subpoena to produce documents for trial because the documents he produced on August 6, 2007 were incomplete; (2) produced a “fabricated letter” and a “false ante-dated document” during the litigation; (3) presented a “false trial brief statement” to the court; and (4) designated as an exhibit on defendants’ exhibit list (served on July 24, 2007) a document that had never been given to her.

In support of their opposition to the motion, the Francos submitted a reporter’s transcript of the proceeding before Judge Vicencia in which Aboutanos stated that she had agreed to the terms of the settlement. The Francos also noted that before she agreed to the settlement, Aboutanos had all of the information necessary to raise the issues raised in the motion, and therefore she failed to demonstrate any good cause for vacating the settlement agreement.

The trial court denied Aboutanos’ motion. The court found that the parties stipulated to settlement of the case orally before the court and the terms of the settlement were entered into the record. The court noted that Judge Vicencia questioned Aboutanos regarding her understanding of those terms, and that she expressed her understanding and agreement to be bound. Finally, the court found that Aboutanos failed to establish that she was not sufficiently aware of all of the evidence and facts regarding the Francos’ attorney’s alleged misconduct before she entered into the settlement, and therefore she failed to establish any ground for vacating it.

No dismissal was filed by the time of the September 26, 2007 hearing on the order to show cause issued at the time of the settlement. At that hearing, the court continued the matter for two months. A month later, Aboutanos filed a “motion seeking an order to compel/re contempt” based upon the Francos’ purported failure to comply with an order to produce certain records, which Aboutanos alleged the

court made at the September 26 hearing. The next day, the Francos filed a motion under section 664.6 to enforce the settlement agreement.

On December 11, 2007, the court denied Aboutanos' motion on procedural and substantive grounds. The court found that the issues raised in the motion were moot because the matter had been settled, the motion was untimely because it was brought well past the discovery cutoff date, and the moving papers were defective because they did not include a copy of the alleged discovery request or a separate statement. Substantively, the court found that Aboutanos failed to show that the Francos did not comply with their discovery obligations, or that the Francos were ordered to produce any records at the September 26 hearing.

That same day, the court granted the Francos' motion to enforce the settlement. The court found that Aboutanos was bound by the terms of the settlement to which she stipulated on the record, and stated, "Plaintiff's apparent remorse or subsequent reservations does not prevent the court from entering judgment on the settlement." Despite this ruling, no judgment was entered at that time. Instead, the court continued the order to show cause regarding dismissal to January 28, 2008.

No judgment or dismissal was entered before the continued hearing on the order to show cause. Neither party appeared at the hearing on January 28, 2008, and the court ordered the case dismissed under section 583.150. That same date, the court sent each party a notice of dismissal, stating that the case was dismissed under section 583.410 for the parties' failure to appear at the hearing on the order to show cause. Aboutanos timely filed a notice of appeal from the dismissal.

## **DISCUSSION**

On appeal, Aboutanos raises issues related to pretrial discovery matters, challenges the trial court's denial of her post-settlement motion to compel, and

challenges the court's denial of her motion to vacate the settlement and the granting of the Francos' motion to enforce the settlement. We begin with an examination of the issues regarding the settlement.

Aboutanos seems to argue that the settlement agreement is invalid for several reasons: (1) "the settlement did not arise out of stipulation of the parties, but by an improvident order of the Court"; (2) the agreement was put on the record without Aboutanos' prior knowledge or consent; (3) Aboutanos did not agree to indemnify the Francos' attorney or insurance carrier; (4) although the parties expressed their understanding of the terms of the agreement, the trial court did not ask whether they agreed to be bound by those terms; (5) there was no meeting of the minds on all material terms; and (6) the Francos defrauded Aboutanos. We are not persuaded.

Aboutanos' first argument relates to manner in which the parties entered the settlement negotiations. She complains that she did not voluntarily participate in the settlement conference, but was ordered by the trial court to attend. But even if her participation in the settlement conference was not voluntary, there is no evidence that the *agreement* that resulted from the conference was involuntary. In fact, the evidence is to the contrary. When asked by Judge Vicencia whether she agreed to the terms, Aboutanos said she did. Thus, the trial court's order to participate in the conference, even if "improvident," does not provide a ground for invalidating the settlement.

Similarly, the fact that the settlement was put on the record without Aboutanos' prior knowledge or consent does not provide a ground for invalidating the settlement. "A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810.) A valid settlement contract was formed when, during the settlement conference, the parties agreed to

certain terms. (Civ. Code, § 1549; see also Civ. Code, §§ 1427, 1428.) Although enforcement of the settlement was made easier by putting the terms of the agreement on the record, the contract was valid regardless of whether the terms were recorded. Just as is the case when an agreement is reduced to writing, when the terms of an agreement are put on the record, the writing or record is simply evidence of the agreement; putting the terms on the record was not required to create a binding agreement. (*Schwartz v. Shapiro* (1964) 229 Cal.App.2d 238, 248 [“The formal written contract is not the agreement of the parties, but only evidence of that agreement [citation]; it adds nothing to what the parties have already agreed upon. [Citation.] Accordingly, the oral terms agreed upon, or the informal writing or writings entered into, become the binding contract notwithstanding the agreement was not reduced to a more formal writing”].) Therefore, even if Aboutanos did not know that the terms of the agreement were going to be put on the record, and did not consent to that beforehand, her lack of knowledge or consent does not invalidate the agreement itself.

Aboutanos’ next three arguments are contrary to the record. The record shows that when Judge Vicencia asked whether the Francos and their insurance carrier agreed to the terms he had set forth, the Francos’ attorney said there was an additional term the parties agreed to, i.e., that Aboutanos would indemnify and hold harmless not only the Francos, but also their insurance carrier and their attorneys. Judge Vicencia then turned to Aboutanos, identified the liens he was aware of, and said: “Now, anyone else out there that incurred expenses or that you treated with or otherwise did things with as a result of the injuries in this case, if they come back and say you still owe them money -- all right? -- and if they try to get that money from either the Francos, their lawyers, their insurance company, or the law firm or Mr. Leavitt -- if they try to get money, then you have to jump in and either pay the amount or defend them and indemnify them. [¶] . . . [Y]ou

understand, if that ever happens, this is going to be your responsibility? [¶] You understand that?” Aboutanos replied, “Yeah. Yes, Your Honor.” Judge Vicencia continued, “Okay. And you’re agreeing to that?” Aboutanos answered, “Yes, Your Honor.”

The record also shows that each time Aboutanos acknowledged that she understood each of the terms of the settlement, Judge Vicencia also asked her whether she agreed to those terms. Each time Aboutanos said that she did.

Thus, the record shows that there was a meeting of the minds on all of the material terms of the settlement agreement.

In her sixth argument regarding the settlement, Aboutanos essentially argues that the Francos and their attorney committed fraud prior to the settlement, and therefore she was entitled to have the settlement vacated. Even if the kind of fraud she alleged was sufficient to vacate the settlement (but see 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, §§ 297, 299, pp. 324, 325-326 [contract may be rescinded if there was fraud in inducement or fraud in inception]), the evidence shows that she was aware of the facts that she contends establish fraud -- or was aware of sufficient facts to put her on notice of possible fraud -- before she entered into the settlement. Therefore, she was not entitled to vacate the settlement on the ground of fraud.

In short, the record shows that there was an agreement to settle the lawsuit, the terms of the agreement were set forth orally before the court, the court questioned the parties as to their understanding and agreement to those terms, and Aboutanos acknowledged that she understood them and agreed to be bound by them. Thus, the trial court properly granted the Francos’ motion to enforce the settlement agreement under section 664.6. That statute provides in relevant part: “If parties to pending litigation stipulate . . . orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to



the terms of the settlement.” (§ 664.6.) The California Supreme Court has instructed that, “in determining whether the parties entered into a binding settlement of all or part of a case, a trial court should consider whether (1) the material terms of the settlement were explicitly defined, (2) the supervising judicial officer questioned the parties regarding their understanding of those terms, and (3) the parties expressly acknowledged their understanding of and agreement to be bound by those terms.” (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 911.) The trial court in this case properly considered each of the factors and concluded that the parties entered into a binding agreement to settle the lawsuit in its entirety. Substantial evidence supports that conclusion. (*Ibid.* [substantial evidence standard of review applies].)

In light of our determination that the trial court’s conclusion that the parties agreed to settle the lawsuit was supported by substantial evidence, the pretrial discovery issues Aboutanos raises on appeal are moot. To the extent she asserts that the trial court erred in denying her post-settlement motion to compel or for contempt based upon an alleged order the trial court made at the September 26, 2007 hearing, there is no evidence in the record to show that any order to produce documents was made at that hearing. Indeed, the trial court, which Aboutanos asserts made the order at issue, found there was no such order. Therefore, Aboutanos has not demonstrated any error by the trial court regarding the issues she raises on appeal.

There is, however, an issue that neither party raised in their initial briefs on appeal: no judgment was entered in accordance with section 664.6.<sup>5</sup> Section 664.6

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<sup>5</sup> Following oral argument, we provided the parties with an opportunity to submit supplemental briefing on this issue. In their supplemental brief, the Francos argue that the minute order granting their motion to enforce the settlement constitutes a judgment, relying upon *Casa de Valley View Owner’s Assn. v. Stevenson* (1985) 167 Cal.App.3d

was enacted to provide “a summary, expedited procedure to enforce settlement agreements when certain requirements that decrease the likelihood of misunderstandings are met.” (*Levy v. Superior Court* (1995) 10 Cal.4th 578, 585.) Thus, the statute allows a party to litigation that has settled to bring a motion to “enter judgment pursuant to the terms of the settlement.” (§ 664.6.) While an order granting a section 664.6 motion may establish that a valid settlement agreement exists, it does not by itself provide an efficient means to enforce the terms of the settlement. Rather, a judgment pursuant to the terms of the settlement must be entered, and the *judgment* may then be enforced.

Ordinarily, the party bringing a motion under section 664.6 submits to the trial court a proposed judgment incorporating the terms of the settlement. Apparently none was submitted in this case, and the trial court simply dismissed the case. At oral argument, the parties confirmed that the settlement has not been effectuated: Aboutanos has not received the money the Francos agreed to pay, because the Francos have not received the release Aboutanos agreed to provide. This stalemate illuminates the reason why the statutory procedure requires that judgment be entered upon the granting of a section 664.6 motion. Upon entry of a judgment incorporating the terms of the settlement -- including a provision deeming Aboutanos to have released all claims upon the tendering of the amount

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1182. They are incorrect. *Casa de Valley View* presented a unique factual situation, in which the party seeking enforcement of the settlement filed its request for dismissal pursuant to the settlement agreement after the trial court granted its motion to enforce, but before the formal judgment was entered. The appellate court rejected the appellant’s argument that the dismissal rendered the subsequently-entered judgment void, finding that the minute order granting the motion to enforce, which described in detail the essential terms of the settlement and contemplated no further action except entry of judgment, constituted the judgment of the court. (*Id.* at p. 1193.) No such finding could be made in the present case, however, because the minute order provides no details regarding the terms of the settlement -- it simply grants the motion to enforce -- and expressly contemplates additional proceedings, inasmuch as it set a further hearing.

the Francos agreed to pay -- both the Francos and Aboutanos will receive the benefits of their agreement.

In contrast, entering a dismissal after granting a section 664.6 motion, as was done in this case, requires a party seeking enforcement of a settlement agreement to file a new lawsuit for breach of contract -- the very thing the statute was enacted to avoid. Therefore, we conclude that the order dismissing this case must be reversed and the matter remanded to the trial court with directions to enter a judgment incorporating the terms of the settlement agreement.

### **DISPOSITION**

The order of dismissal is reversed, and the matter is remanded with directions to the trial court to enter judgment incorporating the terms of the settlement agreement. Each side to bear their costs on appeal.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.